

HOUSE BILL 564
By Burchett

AN ACT to amend Tennessee Code Annotated, Section 4-29-218; Section 39-13-511 and Title 62 relative to the regulation and licensing of adult entertainers, adult-oriented establishments and adult cabarets.

WHEREAS, it is a lawful purpose of the General Assembly of the state of Tennessee to enact laws to protect and promote the general welfare, health, safety and morals of its citizens; and

WHEREAS, the General Assembly is empowered to enact such laws pursuant to the Constitution and the general laws of the state of Tennessee; and

WHEREAS, the Supreme Court of the United States has held that public nudity can be constitutionally proscribed, including nude barroom dancing and adult entertainment in general; and

WHEREAS, the Supreme Court has found that a substantial governmental interest exists in protecting societal order and morality and that because of this governmental interest, a law aimed at regulating conduct, e.g., nudity, is constitutionally permissible as long as such law is the least intrusive means to obtain the governmental interest; and

WHEREAS, the governmental interest is concerned with the possibility of unlawful activities, including but not limited to prostitution and the health dangers associated with certain aspects of certain adult entertainment; and

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WHEREAS, documentation shows that the activities of the patrons varies little from any other establishment that is associated with the consumption of alcohol and the governmental interest lies more with the entertainers; and

WHEREAS, the General Assembly realizes that pertinent knowledge and identification of each entertainer performing in nude or semi-nude dancing establishments would allow for more effective control and monitoring of activity associated with adult-oriented establishments and adult cabarets; and

WHEREAS, the General Assembly desires to minimize and control any adverse effects of adult-oriented establishments and adult cabarets and thereby protect the health, safety and welfare of the citizenry; and

WHEREAS, the General Assembly desires to control adult entertainment within the state of Tennessee at the least possible cost to the taxpayers of Tennessee, and the defense of Chapter 542 of the Public Acts of 1994 has already cost the taxpayers of Tennessee an undetermined amount, also placing local governments in a position of potential liability of over \$50,000 to date; and

WHEREAS, the purpose or intent of this act is to regulate conduct without any express or implied intent to suppress or prohibit any forms of speech or expression and, therefore, preserving our First Amendment Rights; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding Sections 2 through 25 of this act as a new chapter thereto.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Adult bookstore" means an establishment having as a substantial or significant portion of its stock and trade in books, films, videocassettes, or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities" or "specific

anatomical areas” as defined in this section, and in conjunction therewith, have facilities for the presentation of adult entertainment, as defined in Section 7-51-1101, and including adult-oriented films, movies, or live entertainment, for observation by patrons therein;

(2) "Adult cabaret" means an establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers;

(3) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, which has as a significant or substantial portion of such performance, any actual or simulated performance of specified sexual activities of exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers;

(4) "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in Section 7-51-1101, for observation by patrons therein;

(5) "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting material having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in Section 7-51-1101, for observation by patrons therein;

(6) "Adult-oriented establishment" includes, but is not limited to, "adult bookstores," "adult motion picture theaters," and "adult mini-motion picture establishments" and further means any premises to which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An "adult-oriented establishment" further includes, without being limited to, any "adult entertainment studio" or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, model studio, escort service, escort or any other term of like import;

(7) "Commission" means the Tennessee adult entertainment commission, created by Section 20 of this act; and

(8) "Entertainment" means any live exhibition or dance of any type, pantomime, modeling, or other live performance.

SECTION 3. (a) It shall be unlawful for any person, association, joint venture, partnership or corporation to operate an adult-oriented establishment or adult cabaret without having first obtained either a license or a temporary license pursuant to this act for each such business.

(b) No license or temporary license shall be issued to any person who is less than the age of eighteen (18), or to any partnership which has one (1) or more partners, either general or limited, who is less than the age of eighteen (18), or to any

association or joint venture where any member of such organization is less than the age of eighteen (18), or to any corporation which has one (1) or more corporate officers less than the age of eighteen (18).

(c) Any license or temporary license issued pursuant to this act shall apply to only a single adult-oriented establishment or adult cabaret. Any person, partnership, association, joint venture, or corporation which desires to operate more than one (1) adult-oriented establishment or adult cabaret must have a license for each separate location.

(d) All businesses existing upon the effective date of this act which are subject to the provisions of this act, shall submit an application for a license within ninety (90) days of the effective date of this act. If a license is not applied for within such ninety (90) day period, then such existing adult-oriented establishment or adult cabaret shall be in violation of this act.

SECTION 4. The holder of a license or temporary license issued pursuant to this act shall not sell, assign, or transfer such license to any other person, joint venture, partnership, association or corporation without the prior written approval of the commission. The commission may refuse to grant written approval for a transfer only if the transferee is ineligible for a license pursuant to this act. Approval or nonapproval shall be made by the commission within fifteen (15) days of the receipt of a written request for transfer approval. The sale of the stock, or any portion thereof, of a corporation shall not be considered to be a sale, assignment, or transfer in violation of this section.

SECTION 5. The annual fee for an adult-oriented establishment or adult cabaret license is one thousand dollars (\$1,000), which shall be paid in full before the issuance of any adult-oriented establishment or adult cabaret license, or any temporary adult-oriented establishment or adult cabaret license.

SECTION 6. An adult-oriented establishment or adult cabaret license issued pursuant to this act shall remain valid for one (1) year from the date of issuance.

SECTION 7. (a) All applications for an adult-oriented establishment or adult cabaret license or a temporary adult-oriented establishment or adult cabaret license shall be submitted in the name of the person or entity proposing to conduct and operate such adult-oriented establishment or adult cabaret business, and shall be signed by such person or such person's agent. All applications pursuant to this section shall be submitted on a form supplied by the commission, and shall require the following information:

(1) If the applicant is an individual, the individual's name, home address, home telephone number, date and place of birth, and social security number;

(2) If the applicant is a partnership, each partner's name, home address, home telephone number, date and place of birth, and social security number;

(3) If the applicant is an association or joint venture, the name, home address, home telephone number, date and place of birth, and social security number for each member of the association or joint venture;

(4) If the applicant is a corporation, the full and proper corporate name as reflected in its articles of incorporation and/or charter, the state and date of incorporation, and the name, home address, home telephone number, date and place of birth, and social security number of each corporate officer;

(5) The business name, address, and telephone number of the establishment to be used as an adult-oriented establishment or adult cabaret;

(6) The name of the general manager of the establishment, if the general manager is not the person who owns the establishment; and

(7) Written proof that the applicant, and all other individuals identified in subsection (a), are at least eighteen (18) years of age.

(b) At the time of the application, the commission shall request an inspection of the proposed premises by the department of health, the applicable law enforcement agency, and the applicable municipal or county department of codes administration. Results of investigations by the applicable law enforcement agency and inspection reports by the health department and the department of codes administration shall be filed in writing with the commission no later than twenty (20) days after the date of the application. Failure of the health department, the department of codes administration, or the applicable law enforcement agency to file a report within twenty (20) days shall constitute an acknowledgment by such department that it has no objection to a license being issued to the applicant pursuant to this act.

SECTION 8. Within five (5) days of receiving the results of the investigation conducted by the applicable law enforcement agency and the investigation reports of the proposed premises by the department of health and the department of codes administration, the commission shall notify the applicant that the application is granted or denied. A license shall be issued to any applicant who has furnished all the information required by this section in the application for such license, unless:

(1) The applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application for the license;

(2) The applicant, or any of the other individuals as set forth in Section 7, are not eighteen (18) years of age; or

(3) The applicant has had a similar type of license previously revoked for good cause within one (1) year immediately preceding the date of the filing of the application and can show no material change of circumstances since the revocation.

SECTION 9. During the pendency of an application for written approval by the commission of a transfer of a license pursuant to Section 4 of this act, the commission shall issue, upon application by the transferee, a temporary license to allow the adult-

oriented establishment or adult cabaret to operate during the period of consideration by the commission of the application for written approval of license transfer. No fees shall be required for the issuance of such temporary license.

SECTION 10. An adult-oriented establishment or adult cabaret license may be renewed upon the payment of an annual fee as set forth in Section 5, and upon the affidavit by the applicant that there have been no material changes that would otherwise preclude the issuance of an adult-oriented establishment or adult cabaret license.

SECTION 11. (a) The commission may revoke any license issued pursuant to this act or may suspend any such license up to one (1) year, if the commission determines that:

(1) The license was procured by fraud or by false and misleading representations of fact in the application or in any record required to be filed with the commission; or

(2) The license holder has violated any of the provisions of this act.

(b) Upon determination that grounds for revocation or suspension of a license exists, the commission shall send the license holder a notice of revocation or suspension. The notice shall set forth the grounds for revocation or suspension, and upon ten (10) days following the receipt of such notice by the license holder, the license shall be void.

SECTION 12. No public place of amusement, including but not limited to places which offer adult entertainment, shall allow an entertainer who does not possess a valid and current entertainer's license, or temporary entertainer's license issued pursuant to this act, to present adult entertainment on its premises for more than seven (7) days in any given calendar year. No entertainer's license or temporary entertainer's license issued pursuant to this act shall be either assigned or transferred to any other

individual. No entertainer's license, or temporary entertainer's license, shall be issued pursuant to this act to any individual who is under the age of eighteen (18).

SECTION 13. The annual license fee for an entertainer's license shall be twenty-five dollars (\$25.00) which shall be paid in full before the issuance of an entertainer's license, or temporary entertainer's license. Any payment made before the issuance of a temporary entertainer's license shall be nonrefundable.

SECTION 14. (a) All applications for an entertainer's license shall be signed by the applicant and either notarized or certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the commission, and the applicant shall be required to provide the following information and supporting documentation:

(1) The applicant's name, home address, telephone number, date and place of birth, social security number, prior names by which the applicant has been known and any and all stage names or nicknames used by the applicant in entertaining;

(2) The applicant shall present documentation that he or she is at least eighteen (18), and the commission shall receive a copy of such documentation for the commission's files. Any of the following shall be accepted as documentation of age:

(A) A certified copy of the applicant's birth certificate;

(B) A valid motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;

(C) An identification card issued by any state bearing the applicant's photograph and date of birth;

(D) An official passport issued by the United States of America;

(E) An immigration card issued by the United States of America; or

(F) Any other picture identification issued by a governmental entity;

and

(3) Two (2) color passport type of photographs of the applicant measuring two inches by two inches (2" x 2"). One (1) of these photographs shall be retained in the files of the commission, and the other shall be affixed to any license subsequently issued pursuant to this act as set forth in Section 8.

(b) The commission shall stamp the application with the date when the applicant has completely provided the information and documents as set forth in this section and has paid in full the license fees as set in this act.

(c) The failure to provide information required by this section shall constitute an incomplete application, which will not be processed. In the event that any information on the application for an entertainer's license becomes outdated or otherwise inaccurate, an applicant or license holder shall promptly notify the commission in writing and provide such current and accurate information as is available.

SECTION 15. Upon receipt of an application for an entertainer's license, along with age verification and other documentation as set forth in Section 14, and upon payment of the license fee as set forth in Section 13, the commission shall promptly issue a temporary entertainer's license which will authorize the applicant to perform adult entertainment pending the disposition of the application. The temporary entertainer's license shall expire upon issuance of a license, or notice of denial of issuance, and, in any event, shall expire at the end of forty-five (45) days. The holder of a temporary entertainer's license is subject to all the requirements, standards and penalty provisions of this act.

SECTION 16. The commission shall investigate any criminal convictions obtained against the applicant within the past five (5) years in any state, or by the United States government, of the following types of crimes:

(a) Prostitution;

- (b) Indecent exposure;
- (c) Drug-related convictions;
- (d) Sexual battery; and
- (e) Sexual exploitation of children.

SECTION 17. (a) Within thirty (30) days of the date stamped upon an application for a license, the commission shall issue an entertainer's license or a written notice of denial of issuance which shall specify the reasons for such denial. The commission shall issue an entertainer's license if the commission finds:

- (1) That the applicant has not made any false, misleading or fraudulent statements of material fact in the application for a license or in any record required to be filed with the commission;
- (2) That the applicant has attained the age of eighteen (18); and
- (3) That the appropriate license fee pursuant to Section 13 has been paid in full.

(b) Any entertainer's license issued pursuant to this section shall have permanently affixed to it a photograph submitted by the applicant pursuant to Section 14, and shall contain a notation on the license as to whether or not there exists a certified criminal record of the applicant of those crimes set forth in Section 16. A copy of any certified criminal history of the applicant of the crimes as set forth in Section 16 shall be stapled to any license issued under this section and shall not be removed from the license at any time that the license is in effect. Any license which contains a notation that there is attached to it a copy of a certified criminal history of the applicant which does not have stapled to it such a copy shall be void, and shall not license an individual to perform adult entertainment within the state of Tennessee.

SECTION 18. An entertainer's license issued pursuant to this act will remain valid for one (1) year from the date of issuance.

SECTION 19. (a) The commission may revoke any license issued pursuant to this act or may suspend any such license for up to one (1) year, if the commission determines that:

(1) The license was procured by fraud or by false and misleading representations of fact in the application or in any record required to be filed with the commission; or

(2) The license holder has violated any of the provisions of this act.

(b) Upon determination that grounds for revocation or suspension of a license exists, the commission shall send by registered or certified mail to the license holder a notice of revocation or suspension. The notice shall set forth the grounds for revocation or suspension, and the license shall be void ten (10) days following the receipt of such notice by the license holder.

SECTION 20. (a) There is hereby created the Tennessee adult entertainment commission. The commission shall consist of seven (7) members. Six (6) members shall be appointed by the governor. One (1) member shall be appointed by the governor from a list of three (3) names submitted by the other six (6) members of the commission. Each member shall be a resident of Tennessee and shall possess good moral character.

(b) Three (3) of the members appointed by the governor shall have been principally engaged in the adult entertainment business in Tennessee for at least three (3) years before their appointment and shall be of recognized business standing.

(c) Three (3) of the members appointed by the governor shall be persons who are not engaged in or conducting an adult entertainment business and who are knowledgeable of the laws relative to the adult entertainment business.

(d) The member of the commission selected by the six (6) members appointed by the governor shall be knowledgeable of the laws relative to the adult entertainment business.

SECTION 21. (a) The governor shall appoint three (3) members for initial terms of three (3) years and three (3) members for initial terms of four (4) years. The member selected by the members appointed by the governor shall serve an initial term of four (4) years. Thereafter, all members shall serve as provided in subsection (b).

(b) Each member of the commission shall serve for a term of five (5) years. Each member shall serve until such member's successor is appointed and qualified by subscribing to the constitutional oath of office, which shall be filed with the secretary of state.

(c) Any vacancy occurring on the commission shall be filled by the governor for the unexpired term.

(d) No member shall be appointed for more than three (3) consecutive full terms.

(e) In making appointments to the commission, the governor shall strive to ensure that at least one (1) person on the commission is sixty (60) years or older and that at least one (1) person serving on the commission is a member of a racial minority.

(f) The governor may remove any member of the commission for misconduct, incompetency, or willful neglect of duty.

(g) At least one (1) member shall be appointed from each grand division of the state.

(h) In making appointments to the commission, the governor shall strive to ensure that each commission is knowledgeable of the laws of Tennessee concerning the adult entertainment business.

SECTION 22. (a) Upon qualification of the members appointed, the governor shall appoint for an initial term a chair and a vice chair. The commission shall have the power to do all things necessary and proper for carrying out the provisions of this act consistent with the laws of Tennessee. The commission may promulgate rules and regulations reasonably necessary pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b) The rules and regulations of the commission may incorporate and establish canons of ethics and minimum acceptable standards of practice for licenses and permits.

(c) For administrative purposes only, the commission shall be attached to the division of regulatory boards in the department of commerce and insurance.

SECTION 23. (a) The commission may hold such meetings as it may deem necessary for the purpose of transacting such business as may properly come before it. All members of the commission shall be duly notified of the time and place of each meeting.

(b) Four (4) members shall constitute a quorum for the conduct of business at any meeting of the commission.

SECTION 24. Upon notice of the denial, revocation or suspension of any license pursuant to this act, the applicant or license holder may appeal by filing a petition for review with the Davidson County Chancery Court within thirty (30) days from the date of notice of nonissuance, revocation or suspension. The petition for review shall stay the effect of the notice of denial, revocation or suspension.

SECTION 25. A person who violates the provisions of this act is guilty of a Class C misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed two hundred fifty dollars (\$250) or imprisonment not to exceed thirty (30) days, or both. Each day such violation continues shall be considered a separate offense.

SECTION 26. Tennessee Code Annotated, Section 39-13-511(a)(2)(B), is amended by adding the following language to the end thereto:

“Public place” also does not include adult-oriented establishments or adult cabarets as defined in Section 2 of this act.

SECTION 27. Tennessee Code Annotated, Section 4-29-220, is amended by adding a new item thereto, as follows:

() Tennessee adult entertainment commission, created by Section 20 of this act;

SECTION 28. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 29. For the purpose of appointing members of the commission and for promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 1998, the public welfare requiring it.